



MINNESOTA COUNTIES INSURANCE TRUST

100 Empire Drive
Suite 100
St. Paul, MN 55103-1885

651.209.6400
866.547.6516
FAX: 651.209.6495

July 20, 2005

David J. Hauser
Otter Tail County Attorney
121 West Junius, Suite 320
Fergus Falls, MN 56537

Re: **Barlow Projects, Inc.**
Member: **Ottertail County**
File: 102GL0407950 JS
Member: **Todd County**
File: 102GL0508073 JS
Member: **Wadena County**
File: 102GL0508074 JS
Your File: 2004-4104

Dear Mr. Hauser:

This letter amends my letter dated June 8, 2005 directed to Stephen Rufer and copied to you, Gaylord Saetre and Jon Edin. In said letter we disclaimed coverage for this claim/suit based on General Exclusion C, Contractual Penalties, Breach of Contract and further we asserted that the MCIT does not waive any of the conditions, definitions or exclusions in the Coverage Document.

In your letter dated June 16, 2005 you offer notice that you are appealing our declination of representation and coverage and you are joined by Gaylord Saetre representing Todd County and Jon Edin representing Wadena County. You have been advised that the hearing of your appeal is scheduled for August 4, 2005 at the MCIT building in St. Paul.

For the purpose of this communication I will again refer to "the Counties" collectively and Barlow Projects, Inc. as "Barlow". We continue to review this matter in preparation for the hearing and we offer this letter amending our position at this time so that you will have adequate time to consider the coverage issues prior to the hearing.

In addition to General Exclusion C previously cited we note additional exclusions that may be on point. The counterclaim contains allegations of intentional torts as set forth below:

EXHIBIT O

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COUNT I – TORTIOUS INTERFERENCE WITH CONTRACT

33. "Each of the Counties intentionally and improperly procured the breach of contract by engaging in wrongful conduct"

COUNT II – TORTIOUS INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE

37. "Each of the Counties intentionally and improperly interfered with these prospective contractual relations with the City by inducing the City not to continue with its hiring of Barlow..."

COUNT III – UNJUST ENRICHMENT

Paragraphs 33 & 37 as well as others are incorporated by reference...

COUNT IV – CIVIL CONSPIRACY

42. "... the Counties have actively and/or tacitly conspired with each other to deprive Barlow of its rights under its agreements with the City ..."

43. "As a direct and proximate result of this unlawful conspiracy"

In addition, in the part of the counterclaim titled **BACKGROUND**, I refer you to paragraphs 27 & 28 where there are allegations of intentional conduct on the part of the Counties.

We now refer to the Coverage Document as follows:

D. COVERAGE PART D - PUBLIC OFFICIALS LIABILITY COVERAGE

3. Exclusions

g. Fraud, Dishonesty, Malicious and Criminal Acts

Any "Claim" arising out of any dishonest, illegal, criminal, malicious or fraudulent act, whether or not intentional, by any "Covered Party".

i. Intentional Wrongdoing

Any "Claim" arising out of a "Wrongful Act" committed intentionally with knowledge of wrongdoing.

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We are of the opinion that in view of the alleged illegal/unlawful and intentional acts, the cited exclusions are on point and in addition to the breach of contract exclusion. You are advised that the MCIT will have no duty to defend the Counties for these allegations nor will the MCIT have any obligation to indemnify the Counties for any award for damages based on the breach of contract or intentional tort and unlawful conspiracy allegations.

Again, our position is based upon the facts and allegations contained in the counterclaim as well as facts you have presented to us. MCIT further asserts and does not waive any of the conditions, definitions or exclusions in the Coverage Documents.

This decision is made pursuant to the authority of the MCIT Board of Directors. If you disagree with the basis of the decision outlined above, we anticipate that you will address them at the hearing on August 4, 2005.

Sincerely,

John Stein
Senior Claims Representative
Toll Free: 866-547-6516 ext. 6429
Phone: 651-209-6429

cc:

Gaylord Saetre
Todd County Attorney
212 Second Avenue South
Long Prairie, MN 56347

Jon Edin
Wadena County Attorney
415 South Jefferson Street
Wadena, MN 56482